

### *REMARKS*

Claims 3, 5-6, 9, 11, 13-14, 30-35, 37-38 and new claims 41-43 are currently under consideration in the present application. Claims 2, 4, 7, 8, 10, 12, 15, 16, 18, 21-29, 36 and 39-40 have been withdrawn from consideration by the Examiner as a result of a Restriction Requirement. The Examiner also stated in the present Office Action that he considered claims 37 and 38 to be withdrawn, but the Applicants respectfully disagree with the Examiner's position for the reasons given below. Claims 3, 30, 35 and 37 have been amended herein to obviate informalities and improve their form. New claims 41-43 are supported by the specification and drawings as filed, and specifically with reference to the apparatus of FIG. 9 applied as shown in FIG. 6. No new matter is added.

### CLAIM OBJECTIONS

#### **The objection to claims 33 and 34 is traversed.**

Claims are not renumbered during prosecution of a patent application. Claim 33 originally depended from claim 32, and 34 originally depended from claim 33. By amendment, on September 6, 2006, the Applicants amended claim 33 to depend from claim 34 and claim 34 to depend from claim 32. Therefore, the Applicants believe that the Examiner has no basis for the objection to claims 33 and 34, and respectfully request withdrawal of the objection.

#### **The objection to claims 37 and 38 is traversed.**

The Examiner has never previously objected to claims 37 and 38, nor indicated that they had been withdrawn from consideration. Specifically, in the Office Action of July 18, 2007, following the addition of new claims 35-40 as part of an amendment in a response to the previous Office Action of February 2, 2007, the Examiner indicated that only newly submitted claims 36, 39 and 40 would be withdrawn from consideration. In addition, despite the notation that claim 36 would be withdrawn (page 4 of the Office Action), the Examiner provided substantive examination of claims 36, 37 and 38 at pages 2-3 of the Office Action. In similar fashion, in the next Office Action dated November 1, 2007, the Examiner once again provided substantive examination and rejection of claims 37 and 38 (page 4 of the Office Action), and made no comment or objection with regard to the form or dependence of either claim 37 or 38. Accordingly, the Examiner has no basis at this time for considering claims 37 and 38 to be withdrawn under a restriction requirement in consideration of the fact the claims have already been examined on the

merits at least twice over the past year by this Examiner. Therefore, even if there had been a legitimate basis for initially restricting these claims, the Examiner did not do so and has clearly demonstrated through past examination on the merits that there is no additional burden at this time to continuing with examination of claims 37 and 38.

The Applicants submit that the Examiner must continue with examination of 37 and 38, and that the present Office Action should have included a substantive examination of claims 37 and 38. Given that such examination has not been provided by the Examiner, the present Office Action is incomplete and the Applicants consider claims 37 and 38 to be allowable, in the form prior to amendment herein, since the Examiner has failed to provide any basis for rejection.

It also appears that in these past Office Actions, the Examiner has correctly identified claim 37 as properly depending from claim 35 rather than from claim 36.

Claim 37 has been amended herein to depend from claim 35, rather than claim 36. Claim 38 depends from claim 37. According to the statutes and rules, and by amendment, therefore, the objection to claims 37 and 38 is obviated.

#### CLAIM REJECTIONS UNDER 35 USC § 103

**The rejection of claims 3, 9, 11 and 30-35 as being obvious over Meader (US 1,839,798) in view of Elliott (US 1,782,293) is traversed.**

Claim 3, and claims 9 and 11 depending from claim 3, all require, *inter alia*, an apparatus for securing a moveable floor covering to an underlying floor covering supported on a floor, where the underlying floor covering has a layer of pile and a backing with the pile attached to and extending upward from the backing of the underlying floor covering opposite the floor. The apparatus includes a central base member adapted to be placed between the moveable floor covering and the underlying floor covering, with the central base member having an upper surface for attachment thereto of the moveable floor covering, and a lone downwardly extending spike extending from a lower surface of the central base. The threaded spike is adapted to pass completely through the layer of pile and threadably engage the backing of the underlying floor covering for securing the apparatus to the underlying floor covering as the central base member is rotated to screw the threaded spike through the backing.

The combination of Meader and Elliott does not teach or suggest all of these limitations, and cannot therefore render obvious claim 3, or claims 9 and 11 depending from claim 3.

Specifically, both Meader and Elliott teach and suggest only securing a single layer of floor covering, in the form of a rubber mat, carper or rug to a floor. Neither reference contains any teaching or suggestion regarding securing a separate moveable floor covering on top of the rubber mat, carpet or rug, opposite the floor.

Also, neither Meader nor Elliott teach or suggest an apparatus for securing a moveable floor covering to an underlying floor covering supported by a floor through the use of structural features required by the claim limitations, such as a threaded spike which threadably engages a back surface of an underlying floor covering (such as the rubber mat of Meader or the carpet or rug of Elliott) with the threadable engagement being accomplished through rotation of a central base member of the apparatus, in combination with attachment of the moveable floor covering to an upper surface of the central body of the apparatus. Specifically, Meader teaches only securing the rubber mat to the floor by hammering the punch element 6 of the cap closed around the head of a nail 1 through the rubber mat 10 to thereby punch out a hole through the rubber mat, and thereby secure the rubber mat 10 on the floor through interaction of the rubber mat with the punch element 6 and the underside of the cap 5. Therefore, Meader includes no teaching of any sort of engagement of the spike 1 with a backside of the rubber mat 10. The upper surface of the cap of Meader plays no part in retaining the rubber mat on the floor, and there is simply no teaching or suggestion whatever of attaching any sort of moveable floor covering using the apparatus and methods of Meader.

Although Elliott does teach an apparatus having a drive screw with a slotted head threaded through a sleeve member 6, in such a manner that the sleeve member 6 may be secured to a floor by applying torque to the slotted head of the drive screw to threadably engage the drive screw into the floor, Elliott contains no teaching or suggestion that such a drive screw would be suitable in any way for securing the snap fastener stud of Elliott to an underlying floor covering lying upon the floor, rather than being used to secure the carpet or rug directly to the floor as expressly taught by Elliott. Although Elliott does teach the use of an interference fit of the screw with the sleeve member, there is no teaching or suggestion in Elliott that such an interference fit would provide a strong enough connection that the drive screw could be threadably engaged with the floor, or anything else, through application of torque only to the sleeve member. There is no teaching in Elliott or suggestion of applying rotational torque to the screw through any means other than through the slotted head of the screw. Furthermore, Elliott teaches only the securing of a carpet or rug on the floor through attachment of the carpet or rug via a

socket member C to the underside of the head 7 (see FIG. 3), and not through any connection to an upper surface of the sleeve member 6 of Elliott.

Claim 30, and claims 31-34 depending from claim 30, and claim 35, all require, *inter alia*, the same limitations discussed above with regard to traversal of the rejection of claims 3, 9 and 11, and also include additional limitations to the moveable floor covering being a rug and the underlying floor covering being a carpet, with the carpet being supported on a floor, and the apparatus securing the rug to the carpet.

The combination of Meader and Elliott is no more applicable to teaching or suggesting of all the limitations of claims 30-35 than it is to the limitations of claims 3, 9 and 11. Specifically, the limitations of claims 30-35 are not taught or suggested by the combination of Meader and Elliott, and cannot therefore render obvious any of claims 30-35.

For the above discussed reasons, the Applicants respectfully submit that the rejection of claims 3, 9, 11 and 30-35 as being obvious over the combination of Meader and Elliott should be withdrawn.

**The rejection of claims 5, 6, 13 and 14 as being obvious over Meader in view of Elliott, and further in view of Cundall (GB 2 113 993) is traversed.**

The Applicants agree with the Examiner that the combination of Meader and Elliott fails to disclose an upper surface of the central base member having an adhesive for bonding the rug to the upper surface of the apparatus, or the requirement for a removable protective member that is peeled off to expose the adhesive. For the reasons discussed at length above, with regard to traversal of the rejection of claims 3, 9, 11 and 30-35, the combination of Meader and Elliott does not disclose the invention except for the limitations in claims 5, 6, 13 and 14 requiring adhesive and protective members. The Examiner correctly makes no allegation that Cundall, standing alone teaches or suggests the limitations for which the combination of Meader and Elliott is cited. Therefore, the addition of Cundall to Meader and Elliott does not overcome the insufficiency of Meader and Elliott to teach or suggest all limitations of any claim under consideration. The combination of Meader, Elliott and Cundall cannot, therefore, render obvious any of claims 5, 6, 13 or 14. The Applicants therefore respectfully request the withdrawal of the rejection of claims 5, 6, 13 and 14 over the combination of Meader, Elliott and Cundall.

In re Appln. Of: Horst et al.  
Application No.: 10/803,308

### CONCLUSION

In light of the above comments, reconsideration and notification of allowance are respectfully requested.

### FORMAL REQUEST FOR EXAMINER TELEPHONE CONFERENCE REQUESTED

If the Examiner does not believe the claims to be allowable, the Applicants request that the Examiner contact the undersigned Attorney for the Applicants, prior to issuing either another Office Action, to arrange for a telephone conference.

### PROCEDURAL MATTERS AND FEES

The Applicants believe that no fees or overpayments are occasioned by the submittal of this paper. If any fees or overpayments are occasioned by the filing of this paper, however, the Commissioner is authorized to charge those fees, or credit any overpayments to deposit account 50-3505.

Respectfully submitted,

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